

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

INDECK KEYSTONE ENERGY, LLC,)
a Delaware limited liability)
company,)
Plaintiff,) CIVIL ACTION
vs.)
VICTORY ENERGY OPERATIONS, LLC)
a Delaware limited liability)
company,) Case No. 04-CIV-325E
Defendant.) Judge Sean J. McLaughlin
CONFIDENTIAL TESTIMONY

DEPOSITION OF JOHN VISKUP,

a witness called on behalf of the Plaintiff, on the 31st day of January, 2006, at 320 South Boston, Suite 400, in the City of Tulsa, County of Tulsa and State of Oklahoma, commencing at 9:30 A.M., before the undersigned, Joni Humphries, a Certified Shorthand Reporter in and for the State of Oklahoma.

Fee for Original: \$ _____
Paid by Plaintiff.

Doni Humphries
DONI HUMPHRIES, CSR #1236

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5508 South Lewis Avenue
Tulsa, Oklahoma 74105
Phone: (918) 745-9959

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1 A Just reviewed them. That was it.

2 Q When you reviewed them, what were you looking for?

3 A I really didn't spend a lot of time on those at that
4 time, but we looked to confirm the size of the furnace to
5 make sure what was proposed was depicted on the drawings as
6 well.

7 Q As of the time that you received the drawings for the
8 Heinz boilers, did you know what a drawing for a membrane
9 wall looked like?

10 A Yes.

11 Q Did you also know at the time that you received the
12 drawings for the Heinz boilers what a tangent tube design
13 was for a watertube boiler?

14 A Yes.

15 Q What was a tangent tube design?

16 A It's a design where you have a tube essentially
17 touching another tube.

18 Q And what was the design for a membrane wall?

19 A It's a tube where you have a bar of carbon steel
20 construction welded to the tube and when both tubes are
21 joined together it forms a common membrane between the two
22 tubes.

23 Q Now had you seen drawings for tangent tube furnaces
24 prior to the time that you received the drawings for the
25 Heinz boilers?

1 A I may have.

2 Q Were the Heinz boilers Keystone boilers?

3 A Yes.

4 Q Do you recall the steam capacity of the boilers?

5 A I believe they're 75,000 pounds per hour.

6 Q What was the series number for the boilers?

7 A I don't know.

8 Q 14M, 15M?

9 A It's possible, yeah.

10 Q Do you know whether the Heinz boilers were standard

11 Keystone boilers?

12 MR. SHEEAN: Objection, vague.

13 A What do you mean by standard?

14 Q (By Mr. Gisleson) Have you ever heard of a standard

15 Keystone boiler?

16 A I've heard of a standard M-Series.

17 Q When did you first hear of the standard M-Series

18 Keystone boiler?

19 A When I was employed by Indeck Power.

20 Q When were you employed by Indeck Power?

21 A Early nineties.

22 Q What were the years?

23 A I believe it was '92 or '93 until '99.

24 Q What was your understanding of the standard M-Series

25 Keystone boiler at that time?

1 A It was a package boiler.

2 Q Anything else?

3 A It was truck shippable, rail shippable. No, that's

4 about it.

5 Q Did Indeck own any standard M-Series Keystone boilers

6 during the time that you worked at Indeck?

7 A Yes, I believe so.

8 Q How many?

9 A I don't know.

10 Q Approximately?

11 MR. SHEEAN: Objection, calls for speculation.

12 A I don't know, several.

13 Q (By Mr. Gisleson) What was the extent of your

14 contact with the standard M-Series Keystone boilers while

15 you were with Indeck?

16 A I don't understand your question.

17 Q What position did you have with Indeck at the time?

18 A At what time?

19 Q When you worked for Indeck?

20 A What time?

21 Q What was your starting position with Indeck?

22 A Sales Engineer.

23 Q For what years were you a Sales Engineer?

24 A '92 or '93 to '96 or '97.

25 Q What were your responsibilities as Sales Engineer?

1 Heinz boilers at the time that you were discussing a
2 license agreement with EPTI?

3 A What drawings?

4 Q Any of the design drawings for the Heinz boilers?

5 A I don't believe so, no.

6 Q Did you, at any point during the negotiation of the
7 license agreement with EPTI, review design drawings for the
8 Heinz boilers?

9 A No.

10 Q Did you, at any point during the negotiation of the
11 license agreement with EPTI, review any documentation of
12 any kind pertaining to the Heinz boilers?

13 A I don't remember.

14 Q When did you first have contact with someone from
15 EPTI concerning a potential license of a watertube Keystone
16 boiler?

17 A Probably late 1999.

18 Q With whom did you have contact?

19 A With Ron Pancari started out with, and then the next
20 conversation with was with John Barnes.

21 Q How do you spell Ron's last name?

22 A P-a-n-c-a-r-i I believe.

23 Q What position did Ron have?

24 A I think he was in project management.

25 Q With Aalborg or with Erie Power?

1 A Back then I think it was would have been Aalborg.
2 Q what did you discuss with Ron Pancari?
3 A We had some opportunities at that time to quote some
4 larger boilers, and I had contacted Ron, I had a
5 relationship with him during the time I worked at Indeck,
6 and was inquiring whether or not they were still interested
7 in building the Keystone boilers, because they had put it
8 on the shelf.
9 Q what did he tell you?
10 A He directed me to speak with John Barnes. It was a
11 product line that they weren't pursuing any longer, and he
12 directed me to speak with him.
13 Q When did you speak with John Barnes?
14 A It was shortly around the same time frame, shortly
15 thereafter.
16 Q What did John Barnes tell you about the M-Series?
17 A He didn't say a whole lot about it. He didn't give
18 me a whole lot of time on the phone at that particular
19 time, but he asked me to put something down, you know, what
20 I was asking for, you know, what my ideas were so to speak.
21 Q What were your ideas at that time?
22 A We were open to, you know, a multitude of ideas,
23 either manufacturing and/or representation.
24 Q What was the specific product in which Victory had an
25 interest at that time?

1 A The "M" Series.

2 Q At what steam capacity?

3 A At that time it was unlimited.

4 Q Had VEO explored the possibility of entering a
5 license agreement with any other manufacturer or owner of
6 boiler technology?

7 A No.

8 Q EPTI was the only owner of boiler technology that
9 Victory had contacted for licensing?

10 MR. SHEEAN: Well, objection, mischaracterization
11 of prior testimony. It's EPTI, Aalborg.

12 A No.

13 Q (By Mr. Gisleson) Who else was contacted?

14 A Superior Boiler Works.

15 Q With whom at Superior did you speak?

16 A At the time it would have been Warren Hardesty, Al
17 Wasinger, W-a-s-i-n-g-e-r. That's it.

18 Q When did that contact occur?

19 A I think it was around the same time frame, 2000.

20 Q What was the technology that Superior had in which
21 Victory had an interest?

22 A Representation of their fire tube boiler product
23 line.

24 Q Did VEO, in fact, become a representative for fire
25 tube boilers for Superior?

1 Q Anything else?
2 A That's about it.
3 Q What did you and Shawn Brewer discuss about how to
4 market the Keystone boilers?
5 A That we would do it through manufacturers' reps.
6 Q Anything else?
7 A I'm sure we did. I just don't remember right now.
8 Q Now as of that time had VEO set up a network of
9 manufacturers' reps?
10 A We did. We had several that we were working with and
11 with our heat recovery steam generator product line.
12 Q Then what was the next step in the process?
13 A What process?
14 Q Of seeking to license the technology from EPTI?
15 A We met with Mark White and Stephen Kang.
16 Q Where?
17 A Powergen.
18 Q When?
19 A December I guess of probably 2002.
20 Q How many meetings were there at Powergen to discuss
21 the potential license?
22 A I think there was two.
23 Q Who was at the first meeting?
24 A I was, Mark White, Stephen Kang, Shawn Brewer was
25 there.

1 Q How long was that meeting?

2 A A half hour maybe, maybe longer.

3 Q Where was it?

4 A Powergen.

5 Q But was it at a booth, in a conference room?

6 A Trade show booth, yeah.

7 Q Whose booth?

8 A Erie Power.

9 Q Was anyone there other than White and Cain on behalf
10 of EPTI?

11 A At the trade show or at the meeting?

12 Q During that meeting?

13 A Okay. I think Dan Levstek was there. I don't know
14 if he participated. I don't remember or not.

15 Q What did you discuss?

16 A We were expressing our interest at that time to
17 Stephen Kang regarding the license, you know, the
18 opportunity to license the product line.

19 Q Was there any discussion about the design of the
20 boilers that would be licensed?

21 A I don't recall.

22 Q Was there any discussion about the technology, other
23 than that VEO wanted to license Keystone boilers?

24 A I don't recall.

25 Q Was there any discussion about the scope of the

1 respect to VEO's compliance with the license agreement?

2 A No.

3 Q Did he have any involvement with respect to VEO's
4 reporting of sales under the license agreement to EPTI?

5 A No.

6 Q Or the successor licensor, Indeck Keystone Energy?

7 A No.

8 Q When did you first make an offer to Mark White to
9 come work for VEO?

10 A I would say probably within about 30 to 45 days of
11 him leaving Erie Power.

12 Q For what position?

13 A General Manager.

14 Q Who was serving that function as of the time, or just
15 prior to the time that he was hired?

16 A Nobody.

17 Q What were Mark White's responsibilities as General
18 Manager once he accepted the position?

19 A He had multiple responsibilities, one being the
20 management of the license agreement, the other being he
21 managed project managers and the engineers.

22 Q Anything else?

23 A I'm sure we did other things.

24 Q When you said that he had responsibility for
25 management of the license agreement, was it his

1 A Will you restate your question?

2 Q (By Mr. Gisleson) In your view, may VEO use any of
3 the designs it received from EPTI for watertube boilers now
4 that the license agreement has terminated?

5 MR. SHEEAN: Same objection.

6 A No.

7 Q (By Mr. Gisleson) Has VEO provided any of the
8 designs it received from EPTI to any third parties?

9 A No.

10 Q Specifically, did VEO provide any information it
11 received from EPTI to E-Tech?

12 A No.

13 Q How do you know?

14 A I know Mark and I, we talked about -- I mean that
15 information was not ours to give to anybody else. So I
16 mean we talked about it and we didn't do it.

17 Q Did you understand that all the information that EPTI
18 provided to VEO was proprietary and confidential?

19 MR. SHEEAN: Objection, calls for a legal
20 conclusion and mischaracterizes the document.

21 Q (By Mr. Gisleson) You can answer.

22 MR. SHEEAN: And it's vague.

23 A Yeah, I don't know how to answer that question.

24 Q (By Mr. Gisleson) Did anyone from VEO -- strike
25 that. EPTI provided certain software for rating boilers to

1 A We talked about the length of time I believe.

2 Q Anything else?

3 A Not that I can recall.

4 Q So the only item of the license agreement that you
5 can recall discussing with Shawn Brewer was the length of
6 the agreement, prior to the time that the agreement was
7 executed?

8 A I'm sure there were other things discussed. I just
9 can't remember them all at this point.

10 Q Had VEO entered any license agreements prior to the
11 one with EPTI?

12 A Well the one I mentioned before with Superior, but it
13 was a representative agreement, a license to sell their
14 product.

15 Q Had VEO licensed technology from anyone prior to
16 entering a license agreement with EPTI?

17 A No.

18 Q So that the license with EPTI was the very first time
19 that VEO had been involved in licensing technology that it
20 would use to design and manufacture products?

21 A Yes.

22 Q I would like to show you what's been marked as Viskup
23 Exhibit 1. It's a document stamped VEO663 to 685. If you
24 would look at that and let me know when you're done. You
25 see this is two separate e-mails with attachments. The

1 A Yes.

2 Q Did Mark White of EPTI ever tell you that any of the
3 provisions in the license agreement were non-negotiable?

4 A I would say he wasn't open to changes in it at that
5 time.

6 Q What made you believe that?

7 A Just conversation with him.

8 Q Did he tell you what changes EPTI would not accept in
9 the license agreement?

10 A No.

11 Q Was Mark White the only individual with whom you
12 dealt with at EPTI concerning the license agreement?

13 A The negotiation of it?

14 Q During the negotiation of it?

15 A I believe so, yes.

16 Q Turning to page VE0664, which is the first page of
17 the December 20, 2002 draft license agreement, under Clause
18 1, definitions, there's a definition for products, do you
19 see that?

20 A Yes.

21 Q It says product shall mean natural circulation,
22 industrial watertube package steam generators with a steam
23 capacity range beginning at 29,000 PPH, up to and including
24 100,000 PPH. Products shall include, but not be limited to
25 the items set forth in Annex 1. If licensee receives

1 referred to Annex 1 as a guideline?

2 A Well in the draft, I mean there was -- at that
3 particular time.

4 Q Where did it say that Annex 1 was a guideline?

5 A Well if you look at Annex 1, I mean the information
6 is not what we licensed, so it would be a guideline.

7 Q How is the information in Annex 1 not what VEO
8 licensed?

9 A Do you want to look at it?

10 Q Sure. You're referring to the last two pages?

11 A No. I mean this is -- I need Annex 1.

12 Q The final version of Annex 1?

13 A Yeah.

14 Q Okay. We'll get to that. Did you understand that
15 Annex 1 was to be part of the license agreement itself?

16 A Yes.

17 Q Was there ever any negotiation as to the definition
18 of products in the proposed license agreement?

19 MR. SHEEAN: Objection, vague.

20 A I'm sure there was, yes.

21 Q (By Mr. Gisleson) Do you know for a fact whether you
22 and Mark White discussed what the specific wording of the
23 definition of products was to be?

24 A Not necessarily.

25 Q Do you recall specifically having a conversation with

1 Mark White concerning the definition of products in
2 paragraph 1A?

3 MR. SHEEAN: Objection, vague.

4 A We just talked about the boiler products and under
5 the M-Series there is specific model numbers, but it wasn't
6 set up, I mean to my understanding, the Attachment 1 or
7 Annex 1 wasn't set up as having any boundaries to it. It
8 was a guideline.

9 Q (By Mr. Gisleson) Did you understand that VEO had
10 the right to negotiate changes to Annex 1?

11 MR. SHEEAN: Objection, vague.

12 A I believe so.

13 Q (By Mr. Gisleson) Did VEO, in fact, negotiate any
14 changes to Annex 1 prior to the time it was finalized?

15 A I don't know.

16 Q In Clause 1A, the steam capacity range is 29,000 PPH
17 up to and including 100,000 PPH, and that eventually was
18 changed in the final agreement to 150,000, correct?

19 A Yes.

20 Q Why was that increased?

21 A I believe at that time we were just trying to get
22 access to other models or other I guess -- yeah, other
23 models, larger spectrum of range, a larger spectrum we
24 could offer in the market place.

25 Q Is there more profit associated with a larger boiler?

1 Q Did you use any information provided by EPTI to
2 develop the Keystone brochure?

3 A Yes.

4 Q What did you use?

5 A The brochure, the Keystone brochure.

6 Q You simply copied the Keystone brochure that you
7 received?

8 MR. SHEEAN: Objection to the term copied. That
9 mischaracterizes his prior testimony.

10 A We received the brochure from Mark. I'm trying to
11 think who else was there. Anyways, we received the
12 brochure and we utilized it in our marketing, yeah.

13 Q (By Mr. Gisleson) Did you make any changes to the
14 brochure?

15 A Yes, we did.

16 Q Who made the changes to the brochure?

17 A What do you mean who?

18 Q Who at VEO made the changes to the brochure before it
19 was finalized?

20 A I think there was a couple of us that did. Shawn
21 being one, myself, and I think Lee West.

22 Q What position did Lee West have at VEO?

23 A He worked with marketing and computers and graphics
24 and those kind of things.

25 Q Were there portions of the Keystone brochure that VEO

1 simply copied to include in its brochure for Keystone
2 boilers?

3 A Some of it.

4 Q Did VEO provide a final version of the brochure it
5 created for Keystone boilers to EPTI for EPTI's approval?

6 A Yes.

7 Q To whom did you provide it?

8 A I believe it was provided to Mark.

9 Q Did VEO receive written approval that VEO could use
10 that Keystone brochure in that format?

11 A I believe we have.

12 Q Who gave the written approval?

13 A I don't remember right now who it was.

14 Q Can you identify the form that the written approval
15 took?

16 A It would have been possibly an e-mail, but again, the
17 approval came when the information was given to us as well.
18 I mean they handed it to us to use.

19 Q Who sent the e-mail?

20 A It probably would have been from Mark or maybe a
21 secretary or somebody.

22 Q Are you guessing or do you have a specific
23 recollection?

24 A I don't know.

25 Q You don't know whether such an e-mail, in fact,

1 Q You don't know. Did you have any conversations with
2 Mark White after receiving this e-mail asking him about
3 whether you should sign the agreement before the annex was
4 finalized?

5 A I don't recall.

6 Q Did you understand in connection with receiving this
7 e-mail it was still necessary to complete and approve the
8 annex of the license agreement?

9 A Well it says here I suggest that we sign the
10 agreement and when completed, initial off each annex. So I
11 would say yes.

12 Q What was the status of Annex 1 as of January 8, 2003
13 when you received this draft license agreement?

14 A I don't know.

15 Q Did VEO want any additional changes to be made to the
16 license agreement after you received this January 8th
17 version?

18 MR. SHEEAN: Object to the foundation.

19 A I believe there was another change which was relative
20 to adding super heat -- super heated opportunities.

21 Q (By Mr. Gisleson) And that came at some point later
22 on after the annexes were finalized?

23 A I don't remember the time frame.

24 Q Incidentally, based on the changes that were included
25 in your January 7, 2003 e-mail with attached license

1 MR. SHEEAN: Objection, mischaracterizes the
2 document.

3 A Yeah. It doesn't say that. Mark doesn't say that.

4 Q (By Mr. Gisleson) Strike that. I apologize. Did
5 either Shawn Brewer or Trent Miller ever tell you that EPTI
6 was taking the position that the agreement is for the
7 saturated standard 8M through 22M refractory wall design
8 Keystone package boilers?

13 A Can you restate your question please?

14 Q (By Mr. Gisleson) Sure. Did either Shawn Brewer or
15 Trent Miller have any conversations with you about concerns
16 they had as to EPTI's understanding as to the scope of the
17 license agreement?

18 A No.

19 Q I would like to show you what's been marked as Viskup
20 Exhibit 6. It's a document stamped VE0786 through VE0796.
21 Can you take a look at that and let me know if you've seen
22 it before?

23 A There's two of them here. I believe so, yes.

24 Q On the first page of this there's an e-mail from Mark
25 White to Shawn Brewer dated February 3, 2003 from 4:10 P M

1 that then was forwarded to you by Shawn Brewer at 4:57 P.M.
2 the same day?

3 A Yes.

4 Q And it's enclosing revised Annex 1, based on the
5 description of the icon?

6 A I see that, yes.

7 Q And then attached to this there's a copy of Annex 1
8 as well as Annex 2 and 3, is that correct?

9 A Yes.

10 Q As to Annex 1, did you receive any drafts of that
11 annex after the initial data table and then prior to
12 receiving this draft on February 3?

13 A I don't recall if I did or not.

14 Q What did you do after you received this annex on
15 February 3, 2003?

16 A I don't know.

17 Q Did you read it?

18 A I'm sure I did.

19 Q Do you have a specific recollection of reading it?

20 A No.

21 Q Did you discuss Annex 1 with anyone else at VEO?

22 A I'm sure we did.

23 Q Can you identify anyone with whom you, in fact,
24 discussed it?

25 A I would assume Shawn.

1 Q Do you have a specific recollection of discussing it
2 with Shawn?

3 A No.

4 Q Did you discuss Annex 1 with outside Counsel?

5 A I don't recall if I did or not.

6 Q Focusing on Annex 1, did you understand the
7 information that was included in Annex 1?

8 A You mean the guidelines?

9 Q I'm not referring to them as a guideline. Did you
10 understand the information that's included in Annex 1?

11 A What do you mean understand?

12 Q Is there any information in Annex 1 that you did not
13 understand?

14 A I don't know if I did or not. It was just used as a
15 guideline, so.

16 Q Did you discuss Annex 1 with Mark White after you
17 received this copy of the annex on February 3, 2003?

18 A I don't recall.

19 Q Do you see how there are drawings on pages VEO790,
20 791 and 792?

21 A Yes.

22 Q Did you receive any drawings from anyone at EPTI
23 during the negotiation of the license agreement prior to
24 the time that you received those three drawings on February
25 3, 2003?

1 A Any drawings?

2 Q Yes?

3 A I don't remember. I mean it was awhile ago.

4 Q Can you identify any drawings that you received
5 during the negotiation process prior to the time that you
6 received those three drawings that are included in Annex 1?

7 A As I sit here today I can't recall any.

8 Q On page 20, which is the first page of Annex 1, do
9 you see the data table there?

10 MR. SHEEAN: Are you referring to the box at the
11 bottom of the page?

12 Q (By Mr. Gisleson) Right, under the heading standard
13 M-Series Keystone summary?

14 A Yes.

15 Q And that's the same data table that you received in
16 December, correct? Feel free to look back at the exhibit.

17 A Well, I call it a guideline, but you call it a data
18 table. I mean there's some differences to it.

19 Q Overall though the data table follows the same format
20 and contains the same information?

21 A Not necessarily, but it's similar.

22 Q Now do you see the heading for standard M-Series
23 Keystone summary?

24 A Yes.

25 Q Did you have an understanding as to what was meant by

1 the word standard in that heading?

2 A No. I mean it's just been -- I mean I hear -- I have
3 heard standard M-Series for several years. So I just
4 didn't put much thought into it.

5 Q You had heard the phrase standard M-Series for
6 several years prior to receiving this annex?

7 A Oh yeah. I mean it refers to a package boiler.

8 Q Did you understand that the Keystone M-Series had a
9 standardized design?

10 MR. SHEEAN: Objection, vague.

11 A I don't know if I would characterize it as standard.

12 Q (By Mr. Gisleson) How did you characterize it?

13 A Well, I mean within the models, the ratings or
14 capacity efficiencies will change based on operating
15 conditions, so I don't know.

16 Q In terms of the physical design of the boiler itself
17 stayed constant, correct?

18 A No, not necessarily. I know on the -- I just have
19 one example, on the Heinz project, I believe they
20 characterized it as a 15 MSP, which was termed a special.
21 So I think it was a pretty common practice. Again, I mean
22 this was a guideline just to show, you know, capacities,
23 but I mean they would interchange based on field
24 requirements or customer requirements. So you couldn't
25 really go by those.

1 Q And you're aware that the Heinz 15M Special was
2 referred to as a special prior to the time that you signed
3 the license agreement, correct?

4 A What do you mean?

5 Q When did you first hear the Heinz boiler referred to
6 as a 15M Special?

7 A Well I'm using the word special. It was the SP. But
8 it was on the drawings I believe.

9 Q On the drawings for the Heinz boiler that you
10 reviewed before the time you signed the license agreement?

11 A Probably so, yes.

12 Q For Annex 1 there is also a footer showing the drive
13 where this annex was located. Does that show that you, in
14 fact, copied Annex 1 onto your computer?

15 MR. SHEEAN: Objection, lack of foundation.

16 A I don't know if I copied it or not. I don't know if
17 I copied it or not. I don't know if that's what that
18 means. I know a lot of times when you download files to
19 review them, it temporarily sets a file up I think. I
20 don't know if it stayed there.

21 Q (By Mr. Gisleson) Under design on that first page of
22 the annex it says, for the purpose of this agreement the
23 thermal performance of the above M-Series Keystone boilers
24 (product) are based on the following design parameters, and
25 then it lists nine parameters. Do you see that?

1 A Yes.

2 Q What did you understand the purpose of the design
3 parameters to be?

4 A Starting point.

5 Q Starting point for what?

6 A To try to come up with the guidelines below.

7 Q How is it a starting point to come up with the
8 information in the data table?

9 A Well, in this particular case, number 2 here, it is
10 arbitrarily picked as 150 PSIG. So if there's correlation
11 between the table and that number, I mean that number
12 changes all the time. So, I mean, you have to have
13 somewhere to start. I mean it's a guideline. You can't go
14 by this because there's so many variables that change.

15 Q What were the fuels that could be used with the
16 Keystone factory boiler as licensed to VEO?

17 MR. SHEEAN: I'm going to object to the extent it
18 calls for a legal conclusion.

19 MR. GISLESON: I disagree that it does.

20 A I don't know. I mean if I had to go by the annex, it
21 calls out three fuels in this particular case.

22 Q (By Mr. Gisleson) What are the three fuels that are
23 called out by the annex for the Keystone boilers that were
24 licensed by VEO?

25 MR. SHEEAN: Objection to the extent that you're

1 permissible fuel is that could be used in the Keystone
2 boilers licensed by VEO?

3 MR. SHEEAN: Can you read that question back
4 please? Why don't you just read it -- are you able to
5 repeat it?

6 Q (By Mr. Gisleson) Are you able to tell from reading
7 the executed copy of the license agreement what the
8 permissible fuel oils were for the licensed Keystone
9 boilers?

10 A No.

11 Q Does the executed copy of the license agreement
12 contain any information on the geometry of the boilers that
13 were being licensed?

14 MR. SHEEAN: I'm going to object. It calls for a
15 legal conclusion.

16 A Without reading the entire agreement, I don't know.

17 Q (By Mr. Gisleson) Turning to page VEO790 of the
18 February 3, 2003 e-mail with attached annexes, do you see
19 how that page shows a Keystone M-Series standard drawing?

20 A Yes.

21 Q What the design of the walls on this drawing?

22 A Refractory insulating fire brick and block
23 insulation.

24 Q What's the design of the outer walls?

25 A I can't tell -- oh, okay. It says here tangent tube.

1 Q What is the design of the furnace wall?

2 A It says tangent tube.

3 Q Were you able to read this drawing back in February
4 3, 2003 to determine whether the drawing showed tangent
5 tube versus membrane wall construction?

6 A I'm sure I did, but again, this is a guideline, so it
7 wasn't -- I mean this is not setting forth what we
8 licensed.

9 Q Is there anything in Annex 1 showing a membrane wall
10 construction for the boilers that were licensed to VEO?

11 A Well, if you blew the drawing up, I mean, there could
12 be a membrane between the tubes.

13 Q Can you identify anything in Annex 1 showing that a
14 membrane wall technology was part of the standard M-Series
15 boiler that was licensed to VEO?

16 A Sure. I mean it's laid out the same way.

17 Q Is there any reference to membrane wall technology in
18 Annex 1?

19 A The way the tubes are aligned, yes.

20 Q Where?

21 A On the drawing.

22 Q Where does it show membrane wall technology as a part
23 of this design?

24 A It shows it tube to tube, but again, I mean I haven't
25 seen a larger size of this drawing, but it could be on

1 there.

2 Q From what you can tell on this drawing, do you see
3 any reference to membrane walls anywhere?

4 A I would say no.

5 Q What is the construction of the burner throat as
6 shown on this drawing?

7 A What do you mean?

8 Q Does it show a section of the boiler for the burner
9 throat?

10 A What do you mean by section?

11 Q Do you see the reference to castable refractory
12 burner throat support ring and a standard cone throat?

13 A Yes.

14 Q Can you tell whether this boiler includes a water
15 cooled burner throat?

16 A No, it doesn't show it and you wouldn't be able to
17 see it. I mean I don't think that this drawing has all the
18 details as far as the design of the boiler.

19 Q Did you ask Mark White why drawings were included in
20 Annex 1?

21 A No. It was used as a guideline, so I didn't really
22 --

23 Q Did you object to the inclusion of drawings in Annex
24 1?

25 A No reason to.

1 licensee under the license agreement?

2 A I looked at proposals from time to time.

3 Q Was there any policy or practice in place as to when
4 you were to review a particular sales proposal?

5 A The only time necessarily is if the salesman felt
6 maybe uncomfortable with the customer specifications or
7 what have you, I would review it.

8 Q During the time that the license agreement was in
9 place, did you ever go back to look at the license
10 agreement to determine whether a proposed sale was within
11 or without the scope of the license agreement?

12 A I don't know if I would have or not.

13 Q After signing the final version of the license
14 agreement and then initialing the annexes to the license
15 agreement on February 3, 2003, did you at any point
16 thereafter read the license agreement again?

17 A We read it. We reviewed it again at the time that we
18 were looking at the possibility of purchasing the
19 technology.

20 Q That was in the spring of 2004?

21 A I don't remember the time. It could be.

22 Q Any other time when you read the license agreement
23 again after it was finalized?

24 A No.

25 Q Does VEO still have in its possession copies of sales

1 show that it was a Keystone boiler?

2 A Sure.

3 Q Was there any prohibition under any ASME guideline
4 about having a separate plate identifying that this was a
5 Keystone boiler?

6 A I don't know.

7 Q On those occasions when VEO only included a name
8 plate that identified VEO, did it ever include a separate
9 plate identifying that it was a Keystone boiler?

10 A I believe in the beginning we did a few, yes.

11 Q Why did VEO stop having a separate plate identifying
12 Keystone as being the brand name of the boiler?

13 A I don't think we necessarily stopped. Our proposals
14 identified it that way. We just didn't tag it. There
15 really wasn't any tags on it.

16 Q Your proposals identified the boilers as a Keystone?

17 A Yes.

18 Q Did you ever have any discussions with Mark White
19 while you were negotiating the agreement as to whether
20 Victory had to identify on the boiler itself that it was a
21 Keystone boiler?

22 A No.

23 Q What was a Keystone custom steam generating system?

24 A What do you mean?

25 Q Have you ever seen the phrase used in any VEO sales

1 proposals that it was offering for sale a Keystone custom
2 steam generator?

3 A It's possible. We would at times, if a customer had
4 a specific operating pressure or temperature or size, we
5 would build it specifically to their specs, so more as a
6 sales tool.

7 Q What made a Keystone boiler custom as opposed to
8 standard?

9 A What I just said.

10 Q Anything else?

11 A I can't think of anything else right now.

12 Q Were there certain standard drawings for the Keystone
13 that VEO received from EPTI?

14 MR. SHEEAN: Objection, vague. It's vague and
15 ambiguous.

16 A What do you mean by standard?

17 Q (By Mr. Gisleson) Was there a standard set of
18 drawings for each of the different series, 8M through 22M?

19 A There was a roll of drawings that we received, but I
20 don't know if they were all standard or whether it was
21 complete or not.

22 Q Did VEO ever computerize their roll of drawings it
23 received?

24 A I don't believe we ever computerized that roll of
25 drawings. We computerized boilers that were sold in an

1 effort to manufacture them.

2 Q I would like to show you what's been marked as Viskup
3 8. It's a document stamped VEO3783 to 3791. Do you
4 recognize this as a copy of a Keystone "O" type watertube
5 package boiler proposal for Broin & Associates dated
6 January 25, 2003?

7 A Yes.

8 Q Did you review this proposal before it was sent out
9 from Victory?

10 A I believe so, yes.

11 Q On the first page of the proposal, which is stamped
12 VEO3784, under general information it says, Victory Energy
13 Operations, LLC proposes to furnish a Keystone custom steam
14 generating system to be utilized by Broin & Associates as a
15 back up boiler to the primary HRSG system. Can you tell
16 what it was that made this boiler custom from looking at
17 the proposal?

18 A No.

19 Q The following paragraph says that the Keystone design
20 offers the least amount of furnace refractory compared to
21 other designs. The tube and membrane seal welded front and
22 rear walls virtually eliminates all refractory in the
23 furnace other than localized seals and refractory coverage
24 of the water cooled burner throats. This design greatly
25 reduces maintenance costs and offers increased unit

1 you've seen it before?

2 A I don't think I have.

3 Q You see on the first page this is a March 20, 2004
4 e-mail from Shawn Brewer to C.P. Equipment, re: boiler
5 specification for Escalon, and then he's attaching an
6 Escalon proposal?

7 A I don't seen where he attached anything.

8 Q Rita, attached is the Escalon proposal?

9 A It doesn't show any attachment line on there.

10 Q Have you heard of Escalon before?

11 A No.

12 Q Do you see how in the proposal it refers to a
13 Keystone Model 23M, 170,000 PPH package boiler?

14 A Yes, I do.

15 Q Do you have an explanation as to why Shawn Brewer was
16 selling a boiler that was a model 23M, or offering for sale
17 a boiler that was a model 23M, 170,000 PPH package boiler?

18 MR. SHEEAN: I'm objecting to the
19 characterization of this document. It overstates what the
20 document says and it's inconsistent with the testimony of
21 both Mr. Brewer and Mr. Christian. He testified this was a
22 request for pricing and nothing more than that.

23 Q (By Mr. Gisleson) You can answer the question?

24 A The only thing I can think he was thinking of there
25 was that the boiler -- the net conditions may have been

1 150,000 pounds per hour. The balance used for steam. You
2 know, I don't know. I don't know what he was thinking.

3 Q A model 23M Keystone boiler at 170,000 PPH is outside
4 the scope of the license agreement, correct?

5 A I don't know. I need to determine whether or not --
6 no, I don't know.

7 Q Pardon me?

8 A I don't know.

9 Q Did VEO ever license from EPTI the right to use
10 Chevrons and Vortexes as steam purifiers in the Keystone
11 drums?

12 MR. SHEEAN: Objection to the extent it calls for
13 a legal conclusion.

14 A Yes.

15 Q (By Mr. Gisleson) Were you involved in those
16 negotiations?

17 A No.

18 Q Who was?

19 A Mark White.

20 Q I would like to show you what's been marked as Viskup
21 Exhibit 10. Let me know if you've seen that before please?

22 A No.

23 Q Do you see how this appears to be a proposal that was
24 sent by Lee Cole to SNC-Lavalin Constructors, Inc. for a
25 200,000 pound per hour watertube steam boiler?

1 A Yes.

2 Q And that boiler is outside the scope of the license
3 agreement, correct?

4 A I guess so, yes.

5 Q Turn to section 3.1 of the proposal. Do you see how
6 there's a photograph there of -- strike that. Do you see
7 how there's a drawing on that page of a furnace wall
8 construction welded to the membrane, but there's no name on
9 the top line?

10 A Yes.

11 Q Do you recognize that as a Keystone drawing?

12 MR. SHEEAN: Objection, vague.

13 A I've seen other ones like it before, but yeah, I
14 guess so.

15 Q (By Mr. Gisleson) Were you aware of Victory Energy
16 using Keystone drawings and yet removing the name Keystone
17 from the drawing?

18 A Not necessarily.

19 Q Under section 3.1, general, it says the Victory
20 Energy design offers the least amount of furnace refractory
21 compared to other designs. The tube and membrane seal
22 welded front and rear walls virtually eliminates all
23 refractory in the furnace other than localized seals and
24 refractory coverage of the water cooled burner throats.
25 Do you see that?

1 A Yes.

2 Q Why is Victory now referring to this as a Victory
3 Energy design instead of a Keystone design?

4 MR. SHEEAN: Objection, foundation. He's already
5 testified that he hasn't seen the document yet, so I think
6 it's unfair to ask him why language in this document is
7 referred to as such, but if you can answer, go ahead.

8 A I can't answer it.

9 Q (By Mr. Gisleson) Did you ever have any discussions
10 with the sales staff at VEO about removing references to
11 Keystone and inserting in its place references to Victory
12 Energy?

13 A No.

14 MR. GISLESON: Chris, I want to use this, but I
15 don't understand why it's marked as highly confidential.

16 MR. SHEEAN: Let's go off the record.

17 (Whereupon, an off the record discussion was had.)

18 Q (By Mr. Gisleson) I would like to show you what's
19 been marked Viskup Exhibit 11. It's a document stamped
20 VEO2417 to 2435. If you'll let me know whether this is a
21 copy of a proposal that you submitted on behalf of VEO to
22 Broin & Associates dated August 27, 2004?

23 A Yes.

24 Q Turning to the second page, which is VEO2418, under
25 item number 1 it shows that the system is a Victory Energy

1 85,000 PPH auxiliary package boiler. Do you see that?

2 A Yes.

3 Q Why are you referring to it as a Victory Energy
4 boiler rather than a Keystone boiler?

5 A We would -- I mean this template here is a standard
6 template that we use and we insert and remove items as
7 needed to develop the proposals. The same format could be
8 used for an HRSG.

9 Q Well I'll tell you that initially victory was
10 referring to Keystone in that location proposal and now
11 it's switching to Victory Energy. What was the reason for
12 the change?

13 MR. SHEEAN: Objection, asked and answered.

14 A What was your question?

15 Q (By Mr. Gisleson) Why change from referencing the
16 boiler as a Keystone boiler to a Victory boiler?

17 MR. SHEEAN: Objection, lack of foundation. If
18 you know.

19 A No reason. Like I said, we just -- these proposals
20 were changed from time to time and we inserted -- I mean
21 this is a new format as relates to warranting equipment --
22 excuse me, start up and equipment warranty, so new formats,
23 that's all.

24 Q (By Mr. Gisleson) Turn to page VE02420 under general
25 information. It says Victory Energy Operations, LLC

1 proposes to furnish a VEO custom steam generating system to
2 be utilized by Broin & Associates. What made this proposed
3 boiler a custom steam generating system?

4 A We were just building it specifically for the
5 application.

6 Q By custom that means it's no longer a standard
7 M-Series Keystone boiler?

8 MR. SHEEAN: Objection, mischaracterizes his
9 prior testimony, vague as to standard and M-Series. If you
10 understand you can answer.

11 A No.

12 Q (By Mr. Gisleson) No what?

13 A No, it doesn't, not necessarily.

14 Q What were the changes that made this custom rather
15 than standard?

16 A Well we built it specifically for the application.

17 Q What was it about this application that made this a
18 custom boiler?

19 A The pressure, just the operating parameters in this
20 particular project. It was also operating with an HRSG.

21 Q Anything else?

22 A Could have been some control design changes.

23 I'm not sure. I don't remember.

24 Q Who did the design on this boiler?

25 A I don't know. I don't remember.

1 Q Now was this a Keystone boiler or a VEO design --
2 strike that. Was this a Keystone design or a VEO design?

3 A Which one?

4 Q For this Broin boiler in the August 27th --

5 A The package boiler was a Keystone boiler.

6 Q And VEO used the Keystone design that it obtained
7 from EPTI for this boiler?

8 A Yes.

9 Q The reason I ask is in the second paragraph under
10 general information it refers to the VEO design. Why are
11 you referring to this as the VEO design if this was based
12 on a Keystone design?

13 A No particular reason.

14 Q I would like to show you what's been marked as Viskup
15 Exhibit 12. If you would look at that and let me know if
16 you've seen it before?

17 A I believe so, yes.

18 Q Is this a proposal that you submitted to Ware, Inc.
19 on July 13, 2005?

20 A Yes.

21 Q What was the business of Ware, Inc.?

22 A What do you mean?

23 Q What was their business?

24 A They sell boilers, they rent package boilers, repair
25 after market I believe.

1 Q On page number 3 of the proposal, under section 2.0,
2 scope and supply, the first line item is VEO Model 15M "0"
3 type steam boiler saturated steam. Why are you referring
4 to the boiler as a VEO Model 15M rather than a Keystone
5 Model 15M?

6 A No particular reason.

7 Q On page 5, under section 3.0, general information,
8 you refer to the boiler as a custom steam generating
9 system. What made this boiler a custom steam generating
10 system?

11 A I think pretty much what I've been telling you all
12 day about it. I mean this is standard text. We just have
13 it in our proposals. We don't change them. So it's just
14 specific to the application. This one has an off capacity
15 range of 57,000 pounds an hour. So it's being built
16 specifically for the application. That's it.

17 Q And this one also had membrane walls, is that
18 correct?

19 A Yes.

20 Q If you would turn to page number 12 of the proposal.

21 A Okay.

22 Q Why is the reference to Victory Energy "0" Series
23 standard models?

24 A What was the question?

25 Q Why did you refer to the boilers on that page as

1 victory Energy "O" Series standard models?

2 MR. SHEEAN: Lack of foundation.

3 A No particular reason.

4 Q (By Mr. Gisleson) Who prepared this page?

5 A I don't know.

6 Q Was Victory Energy offering for sale an "O" Series
7 watertube package boiler?

8 A Yes.

9 Q That was separate from the Keystone boiler?

10 A No.

11 Q Have you seen other documents where Victory is
12 referring to an "O" Series boiler?

13 A I'm sure we do. It also references Keystone, page 6.

14 Q Why didn't you identify this proposal that Victory
15 was offering the Keystone boiler for sale pursuant to a
16 license agreement with EPTI?

17 MR. SHEEAN: Objection, foundation. He's already
18 testified he doesn't know who prepared this entire
19 document.

20 A Well, I mean we offer a Keystone boiler. Whose to
21 say that we're not.

22 Q (By Mr. Gisleson) But why doesn't the proposal refer
23 to the fact that VEO has a license agreement pertaining to
24 the Keystone?

25 A I didn't know it had to have it in there.

1 A I would say it was probably, you know, somewhere
2 north of three months of when they filed for bankruptcy.

3 Q Why did you want Victory to purchase the technology?

4 A I thought it would be a good opportunity for our
5 company to own the technology, and we already had -- we
6 already had spent a lot of time and money developing --
7 bringing back Keystone into the market and it's just a
8 little easier to continue doing what we were doing.

9 Q Did you understand that it was necessary to purchase
10 the Keystone technology if you wanted to use it after the
11 license agreement expired?

12 A I mean not necessarily.

13 Q How not?

14 A The license could have been extended. I mean there's
15 several things that could have taken place I guess.

16 Q Anything else?

17 A No.

18 Q Did Victory at some point make an offer to purchase
19 the Keystone technology?

20 A I don't know if it was ever formalized, but there was
21 discussions about it, yes.

22 Q Who was involved in the discussions?

23 A Mark White was, my partner Jim Sponder. I'm sure we
24 were speaking to our attorneys at the time. I think that's
25 it.

1 A I don't know. I'm sure that would have been part of
2 it.

3 Q Who took the lead in the negotiations for VEO as to
4 the purchase of the technology, you or Mark White?

5 A I think it was half and half. I think Mark probably
6 had more conversations than I did, but we were both
7 involved at the same time.

8 Q I would like to show you what's been marked as
9 Plaintiff's Exhibit 14. It's a document stamped VEO961 to
10 978. This is a collection of e-mails for a draft license
11 to -- license agreement and option to purchase. If you
12 could flip through this and let me know whether you've seen
13 these pages before?

14 A Okay. Yeah, I'm sure I've seen it.

15 Q The second page of this is a draft license agreement
16 and option to purchase from February of 2004, do you see
17 that?

18 A What page?

19 Q The second page of this, which is VEO962?

20 A Yes.

21 Q And the products would include a boiler from 29,000
22 PPH up to and including 165,000 PPH as more fully disclosed
23 in Annex 1, do you see that?

24 A Yes.

25 Q And then going to page VEO964 under paragraph 6,

1 compensation, it says in consideration of the rights
2 granted herein, licensee shall pay to licensor \$250,000
3 U.S. payable upon the execution hereof. Do you know what
4 the source of the \$250,000 was in that paragraph?

5 A what do you mean?

6 Q Who arrived at the value or amount \$250,000?

7 A I'm sure Mark and I did collectively.

8 Q And then under paragraph 7, option to purchase. It
9 says at the conclusion of the one year term of the
10 licensing provisions of this agreement, at licensee's sole
11 discretion, licensee shall have the option to purchase an
12 assignment of the rights and technical information licensed
13 hereunder for the price of \$250,000 payable U.S., payable
14 on or before the termination date of this agreement.

15 Is that also an amount that you and Mark White developed?

16 MR. SHEEAN: Objection, lack of foundation.

17 A I'm sure it was.

18 Q (By Mr. Gisleson) Going back VE0970, do you see how
19 that is an e-mail from Mark White to Stephen Kang copied to
20 you on February 25, 2004 on the subject of the license
21 agreement and option to purchase?

22 A Yes.

23 Q And it reads in the second paragraph, in general the
24 document is not what we had expected. It is not our desire
25 to enter into an agreement where we will continue to be

1 subject to royalty payments, except for those units above
2 the purchased range, have no guarantee of acquiring the
3 technology and possibly lose our investment should EPTI be
4 forced to liquidate. However, we are willing to enter into
5 an agreement that would allow VEO to purchase the Keystone
6 technology outright for the given range discussed.

7 Is it correct that throughout the time VEO was negotiating
8 with EPTI, it's goal wasn't to extend the license
9 agreement, and instead was to purchase the technology?

10 A I don't know. I wouldn't say that necessarily. I
11 mean after all, they were the ones that came to us and we
12 were trying to work through a relationship with them of
13 some sort. They needed money.

14 Q What was the discussion about extending the scope of
15 the license agreement?

16 A What do you mean?

17 Q Was there a discussion about expanding the license
18 agreement?

19 A I think there was, yes.

20 Q How was the license agreement to be expanded?

21 A Capacity ranges. I know we were asking to go up to
22 larger capacity since we were -- and this might have been
23 pursued to the Notre Dame project and some others. We were
24 going after larger boilers, and also it would be another
25 revenue generator for them.

1 Gdaniec identified concerns that EPTI had?

2 A I think I already said yes, yes.

3 Q Did you have any conversations with Mark White as to
4 whether welded wall or membrane technology was an
5 improvement under the license agreement?

6 A No. It was never viewed that way.

7 Q Did Mark White send any drafts of a response to Mr.
8 Gdaniec's letter?

9 A He may have.

10 Q I would like to show you what's been marked as Viskup
11 Exhibit 17. It's a document stamped VEO1013 to 1016. Is
12 this an e-mail with attachment that you received from Mark
13 white on or about March 26, 2004?

14 A Yes.

15 Q Did you review his proposed response to Bob Gdaniec's
16 letter identifying concerns that EPTI had?

17 A I don't know if I did or not.

18 Q Did you authorize Mark White to send a response to
19 the letter in which EPTI identified concerns it had with
20 VEO's performance?

21 A I don't recall if I did or not.

22 Q I would like to show you what's been marked as Viskup
23 Exhibit 18. It's a document stamped VEO632 through 635.
24 If you will, take a look at that and let me know whether
25 you've seen it before?

1 A This is the same letter I think, isn't it? I don't
2 know, I mean, if I've seen it or not.

3 Q Do you see how you're shown as a CC on Mr. White's
4 March 30, 2004 e-mail to Bob Gdaniec?

5 A Yes.

6 Q It says Bob, the enclosed is in response to your
7 letter dated March 26, 2004. Please feel free to call me
8 should you have any questions or comment. Did you have any
9 discussions with Mark White concerning his March 30, 2004
10 letter before he sent it to EPTI?

11 A I think my comments are the same as I said before. I
12 think it's the same letter. It has different dates on it.

13 Q Do you specifically recall having any conversations
14 with Mark White concerning the substance of his response to
15 EPTI about his concerns with VEO's performance under the
16 license agreement?

17 A I know we talked about it. So, I mean, we had
18 several discussions I'm sure. I just can't recall anything
19 specific right now.

20 Q On how many occasions did you and Mark White discuss
21 the response that VEO would provide Mr. Gdaniec's March
22 26th letter?

23 A I don't know if we ever discussed that in particular,
24 the response. I know we discussed the issues.

25 Q So you don't know one way or the other then whether

1 questioning because I think it lacks foundation and because
2 I think there were documents that you're referring to and I
3 don't think it's fair to ask him about them without showing
4 him the document. You can answer.

5 A I don't know.

6 Q (By Mr. Gisleson) Did you personally review the
7 correspondence that IKE sent to VEO concerning the scope of
8 the license agreement?

9 A I did see some of it, yes.

10 Q Did VEO refuse to comply with IKE's instructions
11 about the scope of the license agreement?

12 A I don't know. I don't think there's any reason to
13 refuse. We did comply.

14 Q You complied with what -- strike that. VEO complied
15 with what IKE asked it to do?

16 A We operated under the terms of the license agreement
17 the way we were suppose to. So that's my answer.

18 MR. SHEEAN: Let's take a break.

19 MR. GISLESON: Sure.

20 (Whereupon, a brief recess was had.)

21 Q (By Mr. Gisleson) I want to show you what's been
22 marked as Viskup Exhibit 19. It's a document stamped
23 VEO1159 to 1160.

24 A Okay.

25 Q Did you receive a copy of this letter on or about

1 August 31, 2004 that was sent by Keith Whitson to Todd
2 Vinson of Kelley, Drye?

3 A I don't know if I did or not.

4 Q Did anyone report to you that VEO, through its
5 outside counsel, had received a letter from IKE stating
6 that VEO had violated the terms of the license agreement?

7 A Can you repeat your question?

8 Q Sure. Did anyone advise you that VEO had received a
9 letter through its outside counsel at Kelley, Drye
10 asserting that VEO had violated the terms of the license
11 agreement?

12 A I don't believe so, no.

13 Q I would like to show you what's been marked as Viskup
14 Exhibit 20. It's a document stamped VEO1161 to 1162. Did
15 you receive a copy of that letter?

16 A I don't think so.

17 Q Do you see how this is a September 9, 2004 letter
18 from Keith Whitson of Schnader to Todd Vinson of Kelley,
19 Drye?

20 A Can you repeat your question?

21 Q Sure. Do you see how this is a letter dated
22 September 9, 2004 from Keith Whitson of Schnader, Harrison
23 to Todd Vinson of Kelley, Drye?

24 A Yes.

25 Q Was Todd Vinson an attorney for VEO in September of